

121 FERC ¶ 61,226  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Arkansas Public Service Commission

v.

Docket No. EL06-76-001

Entergy Services, Inc.  
Entergy Louisiana, L.L.C.  
Entergy Arkansas, Inc.  
Entergy Mississippi, Inc.  
Entergy New Orleans, Inc.

ORDER DENYING REHEARING

(Issued December 3, 2007)

1. On June 29, 2007, the Council of the City of New Orleans, Louisiana (New Orleans City Council) filed a request for clarification or, in the alternative, rehearing of the Commission's order issued on June 1, 2007.<sup>1</sup> As explained below, we deny rehearing.

**Background**

2. On June 7, 2006, the Arkansas Public Service Commission (Arkansas Commission) filed a complaint against Entergy Services, Inc. (Entergy) and certain of the Entergy Operating Companies<sup>2</sup> pursuant to sections 205, 206, and 207 of the Federal Power Act (FPA).<sup>3</sup> The Arkansas Commission requested that the Commission institute

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<sup>1</sup> *Arkansas Public Service Commission v. Entergy Services, Inc.*, 119 FERC ¶ 61,223 (2007) (June 1 Order).

<sup>2</sup> Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc.

<sup>3</sup> 16 U.S.C. §§ 824d, 824e, and 824f (2000).

an investigation into the prudence of Entergy's practices affecting the wholesale rates that flow through its System Agreement. The June 1 Order found that the issues the Arkansas Commission raised were premature and denied the complaint without prejudice. New Orleans City Council seeks rehearing concerning the following language in the June 1 Order:

With respect to the prudence of Entergy's practices affecting the wholesale rates that flow through the System Agreement, we note that in Opinion Nos. 480 and 480-A the Commission determined that a bandwidth is an appropriate remedy to assure that each Entergy Operating Company's customers pay no more than +/- 11 percent of Entergy's system average production cost on an annual basis. Pursuant to those opinions, Entergy is required to make its first annual production cost equalization filing in June 2007. . . . The annual section 205 filings thus provide the Commission and all interested parties the opportunity to analyze all production-related costs of each of the Entergy Operating Companies to make sure all such costs are just and reasonable and prudently incurred.<sup>[4]</sup>

3. Entergy made its first annual section 205 filing on May 29, 2007, in Docket No. ER07-956-000. In accepting and suspending Entergy's proposed rates and establishing hearing and settlement judge procedures, which issued after the New Orleans City Council filed its rehearing request in this proceeding, the Commission explained:

While this proceeding will ultimately result in a Commission determination that will be binding on the states with respect to the bandwidth payments and receipts, and that determination necessarily will be based on underlying cost inputs and the reasonableness thereof, the Commission cannot make a call, absent specific facts, as to all the circumstances in which a state might be preempted from reviewing the prudence of the underlying production costs incurred for the system. Additionally, we recognize that state commissions have jurisdiction over the siting and construction of new generation resources and thus the authority to make prudence determinations at that time.<sup>[5]</sup>

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<sup>4</sup> 119 FERC ¶ 61,223 at P 47 (footnotes omitted).

<sup>5</sup> *Entergy Services, Inc.*, 120 FERC ¶ 61,094, at P 16 (2007) (footnote omitted) (July 26 Order).

**Rehearing Request**

4. New Orleans City Council states that it does not challenge the June 1 Order's dismissal of the Arkansas Commission's complaint. But, it requests that the Commission clarify that its rulings in Entergy's annual production cost proceedings will not adversely affect the ability of the Entergy Operating Companies' retail regulators to make independent prudence determinations in subsequent retail proceedings regarding the cost inputs reflected in Entergy's filings.

5. New Orleans City Council expresses concern that the June 1 Order could have the unintended effect of precluding the retail regulators from their long-established duty of examining the prudence of their retail jurisdictional Entergy Operating Companies' cost inputs in retail rate cases. New Orleans City Council states that it is concerned because any such proposed bandwidth payment filings by Entergy, such as the filing made in Docket No. ER07-956-000, are supported by a myriad of Entergy Operating Company-specific cost inputs, which the New Orleans City Council believes may also be used by the Entergy Operating Companies in subsequent retail rate cases. Consequently, it believes that if the Commission were to determine in such annual production cost equalization proceedings that each of the underlying cost inputs is just, reasonable, and prudent, the Entergy Operating Companies' retail regulators may be foreclosed from the opportunity to make independent prudence determinations regarding these cost inputs in their subsequent retail rate proceedings. Moreover, if that were the case, retail regulators would be forced essentially to conduct their own retail rate cases before the Commission in proceedings for each annual production cost equalization filing.

6. New Orleans City Council suggests, and seeks clarification, that the Commission intended to imply only that its analysis of annual production cost equalization filings by Entergy will address the singular question of whether the methodology and calculations used to produce the proposed payments and receipts reflected therein is in compliance with the Commission's directives in Opinion Nos. 480 and 480-A,<sup>6</sup> and with the Commission's May 25 Orders in Docket Nos. ER07-683, ER07-684 and ER07-727.<sup>7</sup> It asserts that without clarification from the Commission, a Commission order in such production cost equalization proceedings approving Entergy's proposed bandwidth

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<sup>6</sup> *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 111 FERC ¶ 61,311 (Opinion No. 480), *reh'g granted in part and denied in part*, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A), *appeal docketed*, No. 05-1462, *et al.* (D.C. Cir. Dec. 19, 2005).

<sup>7</sup> *Entergy Services, Inc.*, 119 FERC ¶ 61,191; *Entergy Services, Inc.*, 119 FERC ¶ 61,192; and *Entergy Services, Inc.*, 119 FERC ¶ 61,193 (2007).

payments may serve as an inadvertent Commission determination that the individual cost inputs are just, reasonable and prudent, thereby inviting the argument that retail regulators such as New Orleans City Council are precluded from reviewing such costs when presented as part of a retail rate case.

7. Alternatively, if the Commission does not grant its request for clarification of the June 1 Order, New Orleans City Council requests rehearing. It argues that:

Commission pre-approval of the prudence of each and every cost input into the annual production-cost-equalization filings would be a significant curtailment of the retail regulators' traditional jurisdiction and authority over retail rates and would have such an extensive impact on the rate base in the retail-regulators' jurisdictions that it, in effect, would remove regulation of retail rates from the hands of the retail regulators such as the [New Orleans City] Council.<sup>8]</sup>

8. On July 9, 2007, the Arkansas Public Service Commission and the Mississippi Public Service Commission (Arkansas and Mississippi Commissions) filed an answer in support of New Orleans City Council's position.<sup>9</sup>

### **Discussion**

9. We reject Arkansas and Mississippi Commissions' answer. Rule 713 of our Rules of Practice and Procedure does not permit answers to requests for rehearing.<sup>10</sup>

10. We will deny New Orleans City Council's request for rehearing. In Docket No. ER07-956-000, New Orleans City Council, and the Arkansas and Louisiana Commissions jointly argued, as New Orleans City Council argues here, that they were concerned that the Commission's ruling(s) in that case could have the unintended effect of precluding them from examining the prudence of their retail jurisdictional operating companies' cost inputs in retail rate cases. They asked that the Commission clarify that the scope of the proceeding in Docket No. ER07-956-000 was limited solely to whether

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<sup>8</sup> New Orleans City Council's Request for Rehearing at 4.

<sup>9</sup> Arkansas and Louisiana Commissions note that, in their joint protest (in which New Orleans City Council was also a joint protester) of Entergy's first annual production cost filing in Docket No. ER07-956-000, they raised the same issue that New Orleans City Council raises here.

<sup>10</sup> 18 C.F.R. § 385.713(d) (2007).

or not the bandwidth payments/receipts calculated by Entergy are just, reasonable, and not unduly discriminatory or preferential and does not extend to a consideration of whether the actual cost inputs underlying the calculations are just, reasonable and prudent.

11. In the July 26 Order, the Commission responded that all parties in the Docket No. ER07-956-000 proceeding would have the opportunity to raise prudence issues, as the Commission had explained in the June 1 Order. Further, the Commission explained:

While this proceeding will ultimately result in a Commission determination that will be binding on the states with respect to the bandwidth payments and receipts, and that determination necessarily will be based on underlying cost inputs and the reasonableness thereof, the Commission cannot make a call, absent specific facts, as to all the circumstances in which a state might be preempted from reviewing the prudence of the underlying production costs incurred for the system.<sup>[11]</sup>

12. New Orleans City Council raises the same issue that the Commission addressed in the July 26 Order. The July 26 Order's determination regarding the Commission's review of Entergy's first annual production cost equalization filing applies equally to the Commission's review of Entergy's future annual filings for the reasons discussed in the July 26 Order. Thus, contrary to the New Orleans City Council's arguments, the Docket No. ER07-956-000 proceeding (as well as future annual production cost equalization filings by Entergy) will result in a Commission determination that will be binding on the states as to the bandwidth payments and receipts, and that determination necessarily will be based on the underlying cost inputs and the reasonableness thereof.<sup>12</sup> Accordingly, we deny rehearing.

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<sup>11</sup> 120 FERC ¶ 61,094, at P 16. The Commission "recognize[d] that state commissions have jurisdiction over the siting and construction of new generation resources and thus the authority to make prudence determinations at that time." *Id.*

<sup>12</sup> We note, however, as the Commission recognized in the July 26 Order, we cannot make a call as to all the circumstances in which a state might be preempted from reviewing the prudence of any underlying production costs because such calls would necessarily depend on the specific facts of each circumstance.

The Commission orders:

New Orleans City Council's request for rehearing of the June 1 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.